

APPEAL NO. 042046  
FILED OCTOBER 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 28, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of \_\_\_\_\_, does not extend to include cervical radiculopathy, upper extremity reflex sympathetic dystrophy (RSD), right shoulder tenosynovitis, or right elbow sprain/strain and tenosynovitis; that the compensable injury of \_\_\_\_\_, does extend to right wrist carpal tunnel syndrome (CTS); and that the certification of maximum medical improvement (MMI) and impairment rating (IR) by Dr. A on August 25, 2003, did not become final under Section 408.123. The appellant/cross-respondent (claimant) appealed, disputing the extent-of-injury determinations that were unfavorable to her as well as the determination that the August 25, 2003, certification of MMI and IR by Dr. A did not become final under Section 408.123. The respondent/cross-appellant (carrier) responded, urging affirmance of the determinations disputed by the claimant. The carrier also filed an appeal, disputing the determination that the compensable injury extended to right wrist CTS. The claimant responded, urging affirmance of the challenged determination.

DECISION

Affirmed.

**EXTENT OF INJURY**

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable cervicothoracic sprain/strain and right shoulder sprain/strain. The claimant appealed the determinations that the compensable injury did not extend to cervical radiculopathy, upper extremity RSD, right shoulder tenosynovitis, and/or right elbow sprain/strain and tenosynovitis. The carrier appealed the determination that the compensable injury extended to include right wrist CTS. The claimant had the burden of proof on the extent-of-injury issue and it presented a question of fact for the hearing officer to decide. It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The determination that the claimant's compensable injury extended to CTS was supported by the testimony of the claimant as well as the opinion of Dr. L as stated in correspondence dated February 27, 2002. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust

and we do not find them so in this case. Escalera, supra. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

### **FINALITY OF DR. A'S CERTIFICATION**

The hearing officer did not err in determining that the certification of MMI and IR by Dr. A, on August 25, 2003, did not become final under Section 408.123. The parties stipulated that Dr. A issued the first certification of MMI on February 17, 2003, and that Dr. A issued the second certification of MMI and IR on August 25, 2003. The hearing officer found that the parties agreed that Dr. A's first certification of MMI and IR was invalid. That finding was not appealed by either party. The evidence reflects that Dr. A used the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides, 4th edition) to certify the first MMI and IR. The second certification of MMI and IR assessed by Dr. A on August 25, 2003, used the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides-3rd edition).

The evidence reflects that a Request for Benefit Review Conference (BRC) (TWCC-45) was filed by the carrier and it is date stamped as being received by the Texas Workers' Compensation Commission (Commission) on October 30, 2003. On November 14, 2003, a letter of clarification was sent to Dr. A by the Commission, notifying him that some of the body parts he rated were in dispute. The claimant contended both at the CCH and in her appeal that the TWCC-45 was not sufficient to put the parties on notice as to which IR was being disputed. We disagree. The TWCC-45 in evidence reflects that the following box was checked: "Disputing the findings of the designated doctor on [MMI] or impairment." Additionally, the carrier had written the following as a description of the unresolved issue: "[Designated doctor] again gave IR to non-compensable body parts. Per last [BRC] the only compensable part is [the cervical]." (Emphasis added.) There is sufficient evidence to support the hearing officer's finding that the TWCC-45 gave appropriate notice that the carrier was contesting the designated doctor's certification and it was timely filed and the conclusion that the certification of MMI and IR by Dr. A on August 25, 2003, did not become final.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATE SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701-2554.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Edward Vilano  
Appeals Judge